

to conduct its own comparison of the allegedly
forged signatures with her handwriting. See CS¹²
Sarnet, 466 F.3d 251, 255 (2d Cir 2006). In any
event, the proffered excuse for late notice
of the proposed expert is inadequate to
explain the delay of 9 1/2 months.

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January 2013.³ But Hutter suffers from traumatic brain injury with a 21% disability rating, due to an automobile accident that she was involved in on 21 November 2006; and the injury hampers her ability to review documents. Consequently, she did not spot the forgeries until after the 07-JAN-2013 deadline for naming experts. Hutter was also delayed by the fact that my law office is in New York City's financial district, and Hurricane Sandy shut down the office for fifty-five days between 29-OCT-2012 and 24-DEC-2012. That delayed my providing Hutter the 900 documents that defendants Evolution Mortgage and Countrywide Bank produced in discovery, which documents contain the forgeries. Hutter's brain injury and the storm are thus reasonable excuses for her not realizing that she needed a handwriting expert sooner.

Hutter's request that the Court revise its refusal to let her designate a handwriting expert witness satisfies the three criteria that the Second Circuit has promulgated to decide a Rule 60(b)(1) motion.⁴ Hutter did not *willfully* seek to name a handwriting expert late; she has a *meritorious defense*, in that her charge that fourteen documents are forged is meritorious; and her naming a handwriting expert witness will not *prejudice* the defendants, since they will be able to retain experts of their own.

Another reason that the Court should grant Hutter's proposed motion is that Rule 60(b)(3) permits a court to revise an order if there has been fraud, misrepresentation, or misconduct by an opposing party.⁵ A defendant's forging fourteen documents, as defendant Evolution Mortgage or defendant Watermark Capital appears to have done, undeniably constitutes fraud, misrepresentation, or misconduct. And the forged documents will prevent Hutter from fully and fairly presenting her case—specifically, from presenting her Deceptive Practices Act claim—which is this Court's criterion that a party must satisfy in order to come within Rule 60(b)(3).⁶

For the foregoing reasons, plaintiff Nance M. Hutter asks that the Court convene a pre-motion conference concerning Hutter's proposed motion that the Court to reverse its refusal to let Hutter name a handwriting expert witness.

Thank you for your consideration.

³ See Docket Minute Entry of 17-DEC-2012.

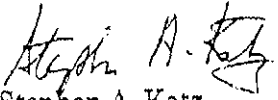
⁴ See *American Alliance Ins. Co. Ltd. v. Eagle Ins. Co.*, 92 F.3d 67, 69 (2d Cir. 1996).

⁵ Fed. R. Civ. P. 60(b)(3) ("On motion and just terms, the court may relieve a party or its legal representative from a[n] . . . order . . . for the following reasons: . . . (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party").

⁶ See *Catskill Development, L.L.C. v. Park Place Entertainment Corp.*, 286 F. Supp. 2d 309, 312 (S.D.N.Y. 2003).

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Sincerely yours,


Stephen A. Katz